

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ERIKA BROWN,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 03-4242</b>
	:	
<b>TINA DANIELS,</b>	:	
<b>Defendants.</b>	:	

**MEMORANDUM AND ORDER**

**Tucker, J.**

**June 15, 2006**

Presently before this Court is Plaintiff's Motion for Reconsideration of the Court's Order Granting Judgment as a Matter of Law in favor of Defendant Tina Daniels (Doc. 48). In her present motion, Plaintiff now asks this Court to reconsider its well-reasoned decision. For the reason set forth below (and by way of further explanation of the Court's June 1, 2006 Order) the Court will once again highlight the weakness of Plaintiff's constitutional claim, and deny the Motion for Reconsideration.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On May 21, 2003, Plaintiff, Erika Brown's minor child, Travonne Lydell Wilson ("Travonne"), was removed from his home by his maternal aunt, Catherine Smith. Smith transported Travonne to Berks County Children and Youth Services ("BCCYS"), where he was interviewed and examined by Defendant, Tina Daniels, a BCCYS employee. Daniels examined Travonne because she had received a report that he was being physically abused by Plaintiff's husband, Kevin Brown. At that time, Daniels, had a male BCCYS employee examine Travonne. The male employee observed multiple bruises on Travonne's upper rear thighs and photographed the bruises as part of the examination. Daniels then contacted both Erika and Kevin Brown at work, and advised them

that Travonne had been taken to his maternal grandmother for his protection. Daniels also left a message on the Brown's home phone requesting that the Browns contact her immediately. Despite Daniels's attempts to reach out to them, both Mr. and Mrs. Brown declined to speak with Daniels. Approximately one week later, Daniels notified the Browns in writing of the alleged physical abuse report, but at no time did the Browns contact Daniels. The Browns appeared at a hearing on June 25, 2003 where Mrs. Brown requested a continuance to retain counsel. On July 9, 2003, a Juvenile Court hearing was conducted and the Juvenile Court directed the family to begin counseling, and ordered Travonne to remain in residence with his grandmother under protective supervision of BCCYS.

On August 11, 2003, Kevin and Erika Brown filed this complaint alleging that Daniels, Supervisor Brandy Neider and BCCYS violated their substantive due process rights by examining Travonne; notifying Kevin Brown's employer of the abuse allegations; and harassing them "during the healing process." The Browns further alleged that the Defendants violated their procedural due process rights by removing Travonne from their home without a court order or hearings as required by Pennsylvania law. The Defendants filed a motion to dismiss all of the claims pursuant to FED. R. CIV. P. 12(b)(6). On August 13, 2004, this Court granted the motion to dismiss, determining that the Browns had failed to state a claim alleging violations of their due process rights or of the Child Protective Services Law (the "CPSL"), 23 PA. CONS. STAT. ANN. §§ 6301-6384, and that, in any event, the appellees were entitled to qualified immunity. The Browns appealed the dismissal to the Third Circuit Court of Appeals, and the Court of Appeals affirmed this Court's decision in part. However, the Court of Appeals remanded the procedural due process claim. After remand, the case went to trial on the sole issue of whether Defendant Daniels violated the Browns' rights to

procedural due process when she failed to provide them with a 72 hour post deprivation hearing, as outlined in the CPSL.

When the trial began, Defendant brought a motion in limine to dismiss Kevin Brown from the case for lack of standing. The Court granted the motion after Kevin Brown admitted that he was not a natural or adoptive parent of Travonne.<sup>1</sup> When given the option to continue the trial in order to retain counsel, Plaintiff Erika Brown chose to present her case without her husband. At the conclusion of her case-in-chief, Defendant Daniels moved for a directed verdict under FED. R. CIV. P. 50(a).

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 50(a) provides that “[i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law . . . with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.” FED. R. CIV. P. 50(a). “Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. ” *Id.* “Generally, a Rule 50 motion should be granted only if evidence is not sufficient for a jury reasonably to find liability.” *Goodman v. Pennsylvania Turnpike Commission*, 293 F.3d 655, 665 (3d Cir. 2002) (citing *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1166 (3d Cir. 1993)). After viewing all the evidence which has been tendered and should have been admitted,

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<sup>1</sup> In her Motion for Reconsideration, Plaintiff argues that the Court mistakenly dismissed Kevin Brown from the case because Mr. Brown is Tavonne’s “emotional father.” (Pl.’s Recon. Mem. at 9.) Unfortunately for Mr. Brown, this title has no legal effect in the Commonwealth of Pennsylvania. The CPSL specifically limits standing to individuals who have legal custody of the child that is the subject of the hearing. *See* 42 PA. CONS. STAT. ANN. §§ 6336.1, 6357 (Lexis through 2005 Legislative Session). Because Kevin Brown does not have legal custody of Travonne, he has no standing to litigate this case.

in the light most favorable to the party opposing the motion, the Court must consider whether any reasonable jury could decide in that party's favor. *Walter v. Holiday Inns, Inc.*, 985 F.2d 1232, 1238 (3d Cir. 1993). Although judgments as a matter of law should be granted sparingly, federal courts do not follow the rule that a scintilla of evidence is enough for the Court to deny the motion. *Id.* The question is not whether there is literally no evidence supporting the party against whom the motion is directed but whether there is evidence upon which the jury could properly find a verdict for that party. *Id.*

### **III. DISCUSSION**

Plaintiff Brown submits that the Court erred in granting Defendant's Rule 50 Motion because she "did satisfy the burden of proof necessary for a reasonable jury to make it [sic] determination." (Pl.'s Recon. Mem. at 1.) In addition to being conclusory, Plaintiff's position is legally infirm. To prevail on claim for denial of procedural due process, Plaintiff was required to prove that Defendant Daniels deprived her of a protected liberty interest without the benefit of required constitutional procedures. *See Croft v. Westmoreland County Children & Youth Servs.*, 103 F.3d 1123, 1125 (3d Cir. 1997). While parents do have a constitutionally protected liberty interest in the custody, care and management of their children, this interest is not absolute, and is limited by the Commonwealth's interest in protecting children. *Id.* According to Plaintiff, the *mere* fact that she was not given a 72 hour post deprivation hearing after Travonne was removed from her home, created a constitutional violation. (*See* Pl.'s Recon. Mem. at 3-4, 6.) Plaintiff was mistaken.

After the Plaintiff's case-in-chief, the Court granted Defendant's Rule 50 Motion and dismissed Plaintiff's procedural due process claim. In doing so, the Court identified two issues that Plaintiff failed to prove or present sufficient evidence on: (1) whether Travonne was actually in

protective custody of Defendant Daniels or BCCYS, and (2) assuming Travonne was in protective custody, whether Defendant Daniels acted unreasonably in not conducting the 72 hour post deprivation hearing. Having answered both questions in the negative, the Court dismissed the remaining claim.

#### **A. Protective Custody**

Initially, the Court found that the testimony established that Travonne was not in protective custody, so therefore, the 72 hour post deprivation hearing did not apply. As noted above, the CPSL can require a 72 hour hearing when a child has been taken in protective custody. *See* 23 PA. CONS. STAT. ANN. § 6315 (Lexis through 2005 Legislative Session). However, the 72 hour rule only applies if the Commonwealth has taken “actual physical custody over a child.” *Puricelli v. Houston*, No. 99-2982, 2000 US Dist. LEXIS 7976, \*35 (E.D. Pa. June 12, 2000). A child is not in custody unless he is “in an appropriate medical facility, foster home or other facility approved . . . for this purpose.” 23 PA. CONS. STAT. ANN. § 6315 (Lexis through 2005 Legislative Session). The testimony in the Plaintiff’s case-in-chief clearly established that Travonne was living with his grandmother, and not in the custody of BCCYS or Defendant Daniels. Because Travonne was not in custody, Plaintiff was not entitled to a hearing and as a result, she could not establish a procedural due process violation. Travonne was at his maternal grandmother’s home to assure his safety pending an investigation of the report of abuse; there is nothing unconstitutional about that course of action.

## **B. Qualified Immunity**

The Court also found that Defendant Daniels acted reasonably based on the report of the alleged abuse that she received, and was therefore entitled to qualified immunity. State officials performing discretionary functions are entitled to qualified immunity so long as their conduct does not violate clearly established constitutional rights that a reasonable person would have known. In this case, Defendant Daniels argued that, under the circumstances, the deprivation of a hearing (which occurred on July 9, 2003) was a reasonable course of action. This Court agreed with Defendant's position at trial, and is not inclined to change that decision.

Plaintiff insists that because a hearing was not held within 72 hours, the violation of her Constitutional rights are automatic. However, this is not the case. Plaintiff did not disagree that Defendant acted reasonably in her investigation of the abuse reported. Plaintiff admits that she was contacted by Defendant Daniels and that she hung up the phone and chose not to contact Defendant until June 25, 2003, the date the hearing was first listed, despite attempts by Defendant to contact her by letter.<sup>2</sup> Moreover, Plaintiff failed to prove any nexus between the May 21 incident and the subsequent deterioration in family relationships, as it was apparent the Plaintiff had significant family problems involving both children before her son left on May 21, 2003. Given the apparent threat of abuse that Travonne faced, and the lack of evidence at trial of any unreasonableness of Defendant Daniels's actions, the Court had no choice but to conclude that Daniels was entitled to qualified immunity for her actions involving Travonne.

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<sup>2</sup> The trial testimony revealed that the Browns, with a group of relatives, went to the police to seek their help to retrieve Travonne from his grandmother's home. When no police support was forthcoming, Mrs. Brown decided not to contact BCCYS (despite receiving correspondence from Defendant Daniels) because she was under stress and experiencing a high risk pregnancy.

#### **IV. CONCLUSION**

After careful consideration of the evidence presented at trial and viewing that evidence in the light most favorable to the Plaintiff, it is the conclusion of this Court that there was not sufficient evidence to sustain a procedural due process claim. Plaintiff failed to tender evidence from which a reasonable jury could conclude that Travonne was in custody, and the facts show that Defendant's actions were reasonable, entitling her to qualified immunity. Accordingly, Plaintiff's claim is dismissed and the motion for reconsideration is denied.

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<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, on this 15th day of July, 2006, upon consideration of Plaintiff's Motion for Reconsideration of the Court's Order Granting Judgment as a Matter of Law in favor of Defendant Tina Daniels (Doc. 48), **IT IS HEREBY ORDERED** that Plaintiff's Motion is **DENIED**.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall mark this case as **CLOSED**.

**BY THE COURT:**

/S/ Petrese B. Tucker

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**Hon. Petrese B. Tucker, U.S.D.J.**